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DAN SMOOT

THE BALDAUF CASE--PART I

From Page 29, *U. S. News & World Report*, May 8, 1967:

"Complains a Navy flier: 'They continue to order us to risk 3-million-dollar aircraft on $25 sampans, thus jeopardizing lives of highly trained pilots. To train a Navy pilot costs $290,000, and it doesn't make sense to ask him to risk his life on worthless targets.'"

And:

"Career military men are reported to have been resigning in unusual numbers. Commented a high-ranking general: 'If you are a career military man, there is no escaping the feeling that under this Administration your experience and opinions no longer count. You have 35-year-old special assistants in the Defense Department, who never saw a war or heard guns, telling admirals and generals what to do and how to do it and even, on occasion, chewing them out.'"

In December, 1966, Major General Jerry D. Page, Commandant of the Air War College, spoke to military officers at a secret, three-day seminar. He briefed them on the seriousness of ordnance shortages plaguing our forces in Vietnam. In January, 1967, General Page was replaced as Commandant and reassigned to Okinawa, on the ground that it was improper for him to criticize Secretary McNamara.[1]

These news items make an interesting preface to the story of Lieutenant Commander Laurence C. Baldauf, Jr., a Navy flier, who has been making a one-man crusade against our no-win war in Vietnam. As a result, the Navy has filed preliminary charges which, if proven at a court-martial, could subject him to a prison sentence for as long as 25 years. Baldauf is not afraid of court-martial. In fact, he would welcome one. What he fears is quiet railroading that will separate him from the service without honor, and brand him for life as mentally sick.

THE DAN SMOOT REPORT is published weekly by The Dan Smoot Report, Inc., Box 9538, Dallas, Texas 75214 (office at 6441 Gaston Ave.). Subscriptions: $18.00 for 2 years; $10.00, 1 year; $6.00, 6 months; first class, $12.50 a year; airmail, $14.50. Dan Smoot was born in Missouri, reared in Texas. With BA and MA degrees from SMU (1938 and 1940), he joined the Harvard faculty (1941) as a Teaching Fellow, doing graduate work in American civilization. From 1942 to 1951, he was an FBI agent; from 1951 to 1955, a commentator on national radio and television. In 1955, he started his present independent, free-enterprise business: publishing this REPORT and abbreviating it each week for radio and TV broadcasts available for commercial sponsorship by business firms.

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The Navy has been Baldauf's life. His father is retired Rear Admiral Laurence C. Baldauf, Sr., who, when leaving the service in 1959, was head of quality control in the Navy's Bureau of Ordnance. His father-in-law is Vice Admiral Lloyd Mustin, presently serving as chief of operations for the Joint Chiefs of Staff in Washington. Baldauf's home is at 850 B Avenue, Coronado, California, where his wife and 3 small children (ages 5, 7, 9) now live.

Laurence C. Baldauf, Jr., was born May 3, 1933. From May 3, 1950, to July 3, 1951, he was in the U. S. Naval Reserve. From July 4, 1951, to June 3, 1955, he was a midshipman at the U. S. Naval Academy. Upon graduation, he was commissioned in the Navy. He became a jet pilot in 1957 and served 3½ years with an attack squadron, making two Far Eastern cruises aboard the carrier *Lexington.* He attended the Navy's Postgraduate School at Monterey from 1960 to 1962, and then became a test pilot with Air Development Squadron 4 at Point Mugu Naval Air Station. After helping develop air-to-ground missile tactics for the F-8 Crusader and A-4 Skyhawk jets, Baldauf was transferred to serve as air warfare officer for the Pacific Fleet Operational Test and Evaluation Force, at North Island, California.

Assigned to work on court-martial cases in the Navy, Baldauf developed an interest in law and began taking a correspondence course, preparing himself for a civilian career after service in the Navy — as the Navy encourages officers to do.

On January 14, 1966, Baldauf gave notice of resignation, to become effective in August, 1966, after completion of his tour of duty at North Island.

More than a desire to change careers motivated Baldauf's decision to leave the Navy. His wife says:

"My husband has been criticized . . . as a 'super patriot.' . . . He has made his own private crusade against communism, both foreign and domestic. He has studied it thoroughly and constantly and is sickened by his beloved country's naive tolerance of this cruel menace.

"He quickly discovered that the military does not offer a platform on which to express these particular views, and he regretfully submitted his resignation from the only life either of us has ever known."

Initially, Baldauf did not give his disagreement with the administration's no-win policy in Vietnam as a reason for his resignation. Like hundreds of other military officers who have been resigning since the Vietnam war began, Baldauf decided to get out of the service before speaking his mind.

But on March 10, 1966, he was notified that his resignation was being deferred from August, 1966, to August, 1967. The next day, he was told he was being transferred, on April 1, 1966, to Atsugi Naval Air Station in Japan, for service with a ferry squadron (to ferry damaged combat planes to and from a repair facility at Atsugi and to test them after repairs).

Baldauf asked that his transfer be deferred for three months, so that he could take a California bar examination, which, under California Bar Association rules, he had to take in June, 1966, in order to get credit for the 2½ years of study he had completed with the extension school. His commanding officer at North Island — Captain Leonard E. Harmon — requested delay of his transfer until he could take the bar examination, saying that Baldauf had no objection to going to the Far East after the examination, pointing out that his educational program would suffer if the transfer were not delayed, describing Baldauf as "an outstanding officer and naval aviator" and a "thoroughly loyal American."

Baldauf also volunteered to withdraw his resignation and go back to a carrier squadron for a year or two if the Navy would let him stay in California until after the bar examination in June.

The Navy would not yield. Baldauf's transfer to Japan on April 1, 1966, remained as ordered.

On March 28, 1966, Baldauf filed suit in U. S. District Court at San Diego, asking the Court to order the Secretary of the Navy to let him resign in August, 1966.

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Baldauf contended that the President has no more right, in peace time, to hold an officer beyond the tenure of his obligated service than it has to force an enlisted man to remain in the armed forces after the term of his enlistment expires. Since the country is not officially at war or in an officially declared state of national emergency, Baldauf argued that denial of his request for resignation violated his rights under the 13th Amendment, which prohibits involuntary servitude, except as punishment for a crime. In a letter published in the *Navy Times*, he said:

"My obligation as an American is to God and Country, in that order; my oath as a Naval officer is to the Constitution, to defend it against enemies foreign and domestic. I am not bound to blindly support this administration. . . .

"I contend that our military leaders do a . . . disservice . . . by acquiescing to a war in Vietnam in which we refuse to win. How can they command their subordinates to fight and die for something other than victory . . . ?

"Senator Dirksen read a letter in the Senate from a father in Wyoming whose son had just been killed in Vietnam. The concluding paragraph was as follows:

" 'No government has the legal or moral right to send men to die when it has been decided, in advance of their commitment, that they will not be allowed to win.' . . .

"Promise me victory in Vietnam and I'll withdraw my resignation and lawsuit immediately."

In a letter to Senator George Murphy, Rear Admiral Wilfred Hearn, Judge Advocate General of the Navy, said that Baldauf's request for resignation was denied because of a shortage of naval pilots, and because "he had not completed the period of service he had agreed to serve in return for being assigned to the various training and educational courses requested by him." Baldauf says his obligated service ended in June, 1966 (4 years after he completed the Navy's Postgraduate School at Monterey).

Contesting Baldauf's suit against the Secretary of the Navy, government lawyers argued that military officers serve "at the pleasure of the President," regardless of whether Congress has declared war or a national emergency.

At a hearing in federal court on March 30, 1966, the judge gave government lawyers 60 days to file an answer to Baldauf's suit, but denied Baldauf's request for a restraining order to prevent the Navy from transferring him to Japan while his case was pending.

Baldauf was transferred to Japan. His case was decided against him, in his absence, by the U. S. District Court at San Diego on November 3, 1966.

The judge said he was not basing his decision against Baldauf on the grounds that a national emergency exists, but on his adherence to the government view that officers serve "at the pleasure of the President," since Congress has passed no law dealing with this question.[2]

The judge said he had reviewed the directives and procedures under which Baldauf's and more than three hundred other officer resignations had been delayed or denied, and had found nothing in them contrary to law. He said Baldauf's resignation had been held up by a board of naval officers because of "an acute shortage of Navy pilots" and because Baldauf had "unique background experience."

There is some indication, however, that the Navy is making an example of Baldauf, trying to discourage other such cases. For example, a naval medical officer, Lt. Robert Borden, sued in Federal Court in Boston, demanding acceptance of his resignation. Borden's attorney asked the Court to hear arguments and act on November 1, 1966. The government asked for a one-month delay. The delay effectively eliminated the suit, because Borden was scheduled for release from service on December 1. Thus, the government avoided a court decision on the question of whether the armed services can retain officers in peace time beyond their obligated terms of service. The federal judge in Boston, though granting the government a one-month delay in the Borden case, accused the government of "bad faith" and "foot dragging" for the purpose of avoiding the issues. Government attorneys denied the accusation, pointing out that the government "was meeting all the issues head on in the Baldauf case . . . in San Diego."[2]

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Unable to get out of the Navy and speak as a civilian, Lieutenant Commander Baldauf began speaking as a serviceman, writing letters, through official channels, to superior officers, denouncing the Johnson administration for sending men to die in a war which he will not let them win, while increasing aid to communist countries that are supplying the weapons to kill our soldiers. Baldauf also criticized some of his superiors for acquiescing in a policy which he considers treason against the United States.

For example:

—*Pacific Stars and Stripes* published a news story quoting Admiral Roy L. Johnson (Commander in Chief of the U. S. Pacific Fleet) as saying, while on a visit to Vietnam, that there is no shortage of naval pilots. Baldauf (whose resignation had been delayed because of an "acute shortage of Navy pilots") wrote Admiral Johnson, saying:

"How in God's name can you say there is no pilot shortage? . . .

"Of course there is a pilot shortage—and it will get worse! . . .

"*Victory* is the only goal worthy of that effort [by American combat flyers in Vietnam] — for with victory comes pride in a job well done. Our country needs a victory, Admiral Johnson; and it needs military leaders with the guts to stand up and say so."

—*Pacific Stars and Stripes* published an Associated Press news story from Washington, revealing that Admiral David L. McDonald (Chief of Naval Operations) disagrees with Secretary of Navy Paul H. Nitze about the use of American airpower in Vietnam. Admiral McDonald told the Senate Preparedness Subcommittee that our airpower is not being used effectively. Nitze told the Subcommittee that our airpower *is* being used effectively. Lieutenant Commander Baldauf wrote to Admiral McDonald, congratulating him for his honesty. Concerning Nitze and his viewpoint, Baldauf said:

"It is understandable why Mr. Nitze would say that he thinks our airpower *is* being used effectively. From his Asilomar speech in 1960 when he suggested that America not strive for nuclear superiority over the Soviet Union, to the present time, he has been in the van of those lobbying for disarmament and world federalism. An unrestricted use of U. S. airpower in Vietnam would result in swift and resolute victory—a concept antipathetical to Mr. Nitze's goals. So, as a matter of semantics, using aesopian language, our airpower is being used effectively—it effectively promotes disarmament and world federalism by forestalling victory."

—In a letter to Admiral Sharp, Baldauf said:

"Why have our military leaders acquiesced to the *no-win* policy in Vietnam? . . .

"No-win wars erode sovereignty; victory promotes nationalism (a dirty word to the administration), and so the former must prevail.

"There is a solution to this problem, Admiral Sharp, but it's not an easy solution—it's going to require a lot of moral courage. I propose the following: what would happen if you and several other top military leaders resigned in protest over our no-win policy? I'm not soliciting you to commit sedition but only suggesting that you abide by your oath to the Constitution. By abdicating your oath, you betray your country. And I would remind you that some day a conservative administration will come to power in our country —and when it does, *treason* will once again have a meaning, for the files on Vietnam will be reopened."

Though the Navy has preferred charges against Baldauf, it has notified him that his resignation, originally delayed until August, 1967, will be accepted in June, 1967 — a curious development.

Next week: conclusion.

FOOTNOTES

(1) "Vietnam — While Brave Men Die," by Wallis W. Wood, *American Opinion*, June, 1967, pp. 1-16

(2) "Federal Court Upholds Navy Right to Defer Resignations," *Navy Times*, November 16, 1966

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